

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 21-0711.01 Esther van Mourik x4215

HOUSE BILL 21-1002

HOUSE SPONSORSHIP

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Moreno and Hansen,

House Committees

Finance
Appropriations

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A BILL FOR AN ACT

101 **CONCERNING REDUCTIONS TO CERTAIN TAXPAYERS' STATE INCOME**
102 **TAX LIABILITY RELATED TO STATE TAX LAW CHANGES MADE IN**
103 **2020, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Sections 1 and 3 of the bill restore, over time, certain business deductions to federal taxable income that were disallowed in Colorado by operation of a department of revenue rule and by House Bill 20-1420.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
January 14, 2021

HOUSE
3rd Reading Unamended
January 14, 2021

HOUSE
Amended 2nd Reading
January 13, 2021

The specific deductions are related to net operating losses, the application of the federal excess business loss rules, interest expenses, and qualified improvement property.

The earned income tax credit is equal to a percentage of the federal earned income tax credit. **Section 2** allows taxpayers filing with an individual taxpayer identification number to claim the earned income tax credit for income tax years commencing on or after January 1, 2020.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-104, **add**
3 (4)(z) as follows:

4 **39-22-104. Income tax imposed on individuals, estates, and**
5 **trusts - single rate - legislative declaration - definitions - repeal.**

6 (4) There shall be subtracted from federal taxable income:

7 (z) (I) EXCEPT AS PROVIDED IN SUBSECTION (4)(z)(II) OF THIS
8 SECTION, FOR INCOME TAX YEARS BEGINNING ON OR AFTER JANUARY 1,
9 2021, BUT BEFORE JANUARY 1, 2022, THE SUM OF THE AMOUNT BY WHICH
10 TAXABLE INCOME FOR THE SPECIFIED TAX YEARS EXCEEDS THE TAXABLE
11 INCOME FOR THE MODIFIED SPECIFIED TAX YEARS COMPUTED SEPARATELY
12 FOR EACH INCOME TAX YEAR, PLUS THE SUM OF ANY AMOUNTS ADDED
13 BACK BY THE TAXPAYER AS SPECIFIED IN SUBSECTIONS (3)(l), (3)(m), AND
14 (3)(n) OF THIS SECTION.

15 (II) (A) THE SUBTRACTION CALCULATED UNDER SUBSECTION
16 (4)(z)(I) OF THIS SECTION APPLIES AFTER THE APPLICATION OF THE OTHER
17 SUBTRACTIONS PROVIDED FOR IN THIS SUBSECTION (4) AND IS LIMITED TO
18 THE LESSER OF THE TAXPAYER'S COLORADO TAXABLE INCOME OR THREE
19 HUNDRED THOUSAND DOLLARS.

20 (B) ANY AMOUNT OF THE SUBTRACTION CALCULATED UNDER
21 SUBSECTION (4)(z)(I) OF THIS SECTION THAT A TAXPAYER MAY NOT CLAIM
22 BY OPERATION OF SUBSECTION (4)(z)(II)(A) OF THIS SECTION MAY BE

1 CARRIED FORWARD TO SUBSEQUENT TAX YEARS AS A SUBTRACTION FROM
2 THE TAXPAYER'S FEDERAL TAXABLE INCOME UNTIL EXHAUSTED; EXCEPT
3 THAT EACH TAX YEAR'S SUBTRACTION MAY NOT EXCEED THE LESSER OF
4 THE TAXPAYER'S COLORADO TAXABLE INCOME OR ONE HUNDRED FIFTY
5 THOUSAND DOLLARS FOR THE INCOME TAX YEARS COMMENCING ON OR
6 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2026, AND EACH YEAR'S
7 SUBTRACTION MAY NOT EXCEED THE TAXPAYER'S COLORADO TAXABLE
8 INCOME IN ANY INCOME TAX YEARS THEREAFTER. ANY SUBTRACTION
9 MUST BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE.

10 (III) A TAXPAYER THAT APPLIES THE SUBTRACTION ALLOWED IN
11 THIS SUBSECTION (4)(z) WITH RESPECT TO QUALIFIED IMPROVEMENT
12 PROPERTY SHALL CALCULATE THE GAIN OR LOSS ON A SALE OF SUCH
13 QUALIFIED IMPROVEMENT PROPERTY FOR PURPOSES OF THE SUBTRACTION
14 IN SUBSECTION (4)(b) OF THIS SECTION USING THE BASIS REPORTED ON
15 THEIR FEDERAL INCOME TAX RETURN AT THE TIME OF THE SALE.

16 (IV) AS USED IN THIS SUBSECTION (4)(z), UNLESS THE CONTEXT
17 OTHERWISE REQUIRES:

18 (A) "CARES ACT" MEANS THE MARCH 2020 "CORONAVIRUS AID,
19 RELIEF, AND ECONOMIC SECURITY ACT", PUB.L. 116-136.

20 (B) "COLORADO TAXABLE INCOME" MEANS FEDERAL TAXABLE
21 INCOME AS MODIFIED BY THIS ARTICLE 22 WITHOUT REGARD TO THIS
22 SUBSECTION (4)(z).

23 (C) "RETROACTIVE PROVISIONS OF THE CARES ACT" MEANS THE
24 CHANGES MADE TO THE INTERNAL REVENUE CODE IN SECTIONS 2303,
25 2304, 2306, AND 2307 OF THE CARES ACT.

26 (D) "TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEARS"
27 MEANS THE TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS

1 ENDING BEFORE MARCH 27, 2020, AS CALCULATED UNDER THE INTERNAL
2 REVENUE CODE AND COLORADO LAW APPLICABLE TO THE TAXPAYER'S
3 RETURN AS OF THE DATE THE RETURN WAS DUE, AS MODIFIED BY THE
4 APPLICATION OF THE RETROACTIVE PROVISIONS OF THE CARES ACT
5 APPLIED TO THE CALCULATION OF THE TAXPAYER'S FEDERAL TAXABLE
6 INCOME, BUT ONLY TO THE EXTENT THE TAXPAYER APPROPRIATELY
7 APPLIED THOSE PROVISIONS TO THE TAXPAYER'S FEDERAL INCOME TAX
8 RETURNS FOR EACH TAX YEAR.

9 (E) "TAXABLE INCOME FOR THE SPECIFIED TAX YEARS" MEANS THE
10 TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS ENDING
11 BEFORE MARCH 27, 2020, AS CALCULATED UNDER COLORADO LAW
12 APPLICABLE TO THE TAXPAYER'S RETURN AS OF THE DATE THE RETURN
13 WAS DUE.

14 **SECTION 2.** In Colorado Revised Statutes, 39-22-123.5, **amend**
15 (2.5)(a); and **repeal** (2.5)(c) as follows:

16 **39-22-123.5. Earned income tax credit - not a refund of excess**
17 **state revenues - trigger - legislative declaration.** (2.5) (a) For income
18 tax years commencing on or after ~~January 1, 2021~~ JANUARY 1, 2020, but
19 before January 1, 2022, a resident individual is allowed an earned income
20 tax credit against the taxes due under this article 22 that is equal to ten
21 percent of the federal credit that the resident individual would have been
22 allowed, but for the fact that the resident individual, the resident
23 individual's spouse, or one or more of the resident individual's dependents
24 do not have a social security number that is valid for employment.

25 (c) ~~For purposes of this subsection (2.5), a "resident individual"~~
26 ~~includes a taxpayer filing with an individual taxpayer identification~~
27 ~~number.~~

1 **SECTION 3.** In Colorado Revised Statutes, 39-22-304, **add**
2 (3)(p) as follows:

3 **39-22-304. Net income of corporation - legislative declaration**
4 **- definitions - repeal.** (3) There shall be subtracted from federal taxable
5 income:

6 (p) (I) (A) EXCEPT AS PROVIDED IN SUBSECTIONS (3)(p)(I)(B) AND
7 (3)(p)(II) OF THIS SECTION, FOR INCOME TAX YEARS BEGINNING ON OR
8 AFTER JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2022, THE SUM OF THE
9 AMOUNT BY WHICH TAXABLE INCOME FOR THE SPECIFIED TAX YEARS
10 EXCEEDS THE TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEARS
11 COMPUTED SEPARATELY FOR EACH INCOME TAX YEAR, PLUS THE AMOUNT
12 ADDED BACK BY THE TAXPAYER AS SPECIFIED IN SUBSECTION (2)(i) OF THIS
13 SECTION.

14 (B) FOR ANY INCOME TAX YEAR INCLUDED IN THE CALCULATION
15 UNDER SUBSECTION (3)(p)(I)(A) OF THIS SECTION IN WHICH THE TAXPAYER
16 WAS REQUIRED TO APPORTION OR ALLOCATE INCOME TO COLORADO
17 UNDER THE PROVISIONS OF THIS ARTICLE 22 APPLICABLE TO THAT INCOME
18 TAX YEAR, THE AMOUNT INCLUDED IN THE CALCULATION UNDER
19 SUBSECTION (3)(p)(I)(A) IS THE FOLLOWING AMOUNT MULTIPLIED BY THE
20 TAXPAYER'S APPORTIONMENT FACTOR FOR THE TAX YEAR: THE AMOUNT
21 BY WHICH TAXABLE INCOME FOR THE SPECIFIED TAX YEAR EXCEEDS THE
22 TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEAR, PLUS THE
23 AMOUNT ADDED BACK BY THE TAXPAYER AS SPECIFIED IN SUBSECTION
24 (2)(i).

25 (II) (A) THE SUBTRACTION CALCULATED UNDER SUBSECTION
26 (3)(p)(I) OF THIS SECTION APPLIES AFTER THE APPLICATION OF THE OTHER
27 SUBTRACTIONS PROVIDED FOR IN THIS SUBSECTION (3) AND IS LIMITED TO

1 THE LESSER OF THE TAXPAYER'S COLORADO TAXABLE INCOME OR THREE
2 HUNDRED THOUSAND DOLLARS.

3 (B) ANY AMOUNT OF THE SUBTRACTION CALCULATED UNDER
4 SUBSECTION (3)(p)(I) OF THIS SECTION THAT A TAXPAYER MAY NOT CLAIM
5 BY OPERATION OF SUBSECTION (3)(p)(II)(A) OF THIS SECTION MAY BE
6 CARRIED FORWARD TO SUBSEQUENT TAX YEARS AS A SUBTRACTION FROM
7 THE TAXPAYER'S FEDERAL TAXABLE INCOME UNTIL EXHAUSTED; EXCEPT
8 THAT EACH TAX YEAR'S SUBTRACTION MAY NOT EXCEED THE LESSER OF
9 THE TAXPAYER'S COLORADO TAXABLE INCOME OR ONE HUNDRED FIFTY
10 THOUSAND DOLLARS FOR THE INCOME TAX YEARS COMMENCING ON OR
11 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2026, AND EACH YEAR'S
12 SUBTRACTION MAY NOT EXCEED THE TAXPAYER'S COLORADO TAXABLE
13 INCOME IN ANY INCOME TAX YEARS THEREAFTER. ANY SUBTRACTION
14 MUST BE APPLIED FIRST TO THE EARLIEST INCOME TAX YEARS POSSIBLE.

15 (C) IN THE CASE OF A TAXPAYER THAT APPORTIONS AND
16 ALLOCATES NET INCOME AS REQUIRED BY SECTION 39-22-303.6 (3)(b) IN
17 THE TAXPAYER'S INCOME TAX YEAR BEGINNING ON OR AFTER JANUARY 1,
18 2021, BUT BEFORE JANUARY 1, 2022, THE SUBTRACTION APPLIES TO THE
19 TAXPAYER'S NET INCOME APPORTIONED AND ALLOCATED TO COLORADO.
20 ANY CARRY FORWARD AMOUNT SUBTRACTED IN A SUBSEQUENT TAX YEAR
21 UNDER SUBSECTION (3)(p)(II)(B) OF THIS SECTION IS APPLIED TO NET
22 INCOME APPORTIONED AND ALLOCATED TO COLORADO FOR THAT
23 SUBSEQUENT TAX YEAR.

24 (III) A TAXPAYER THAT APPLIES THE SUBTRACTION ALLOWED IN
25 THIS SUBSECTION (3)(p) WITH RESPECT TO QUALIFIED IMPROVEMENT
26 PROPERTY SHALL CALCULATE THE GAIN OR LOSS ON A SALE OF SUCH
27 QUALIFIED IMPROVEMENT PROPERTY FOR PURPOSES OF THE SUBTRACTION

1 IN SUBSECTION (3)(c) OF THIS SECTION USING THE BASIS REPORTED ON
2 THEIR FEDERAL INCOME TAX RETURN AT THE TIME OF THE SALE.

3 (IV) AS USED IN THIS SUBSECTION (3)(p), UNLESS THE CONTEXT
4 OTHERWISE REQUIRES:

5 (A) "CARES ACT" MEANS THE MARCH 2020 "CORONAVIRUS AID,
6 RELIEF, AND ECONOMIC SECURITY ACT", PUB.L. 116-136.

7 (B) "COLORADO TAXABLE INCOME" MEANS FEDERAL TAXABLE
8 INCOME AS MODIFIED BY THIS ARTICLE 22 WITHOUT REGARD TO THIS
9 SUBSECTION (3)(p).

10 (C) "RETROACTIVE PROVISIONS OF THE CARES ACT" MEANS THE
11 CHANGES MADE TO THE INTERNAL REVENUE CODE IN SECTIONS 2306 AND
12 2307 OF THE CARES ACT.

13 (D) "TAXABLE INCOME FOR THE MODIFIED SPECIFIED TAX YEARS"
14 MEANS THE TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS
15 ENDING BEFORE MARCH 27, 2020, AS CALCULATED UNDER THE INTERNAL
16 REVENUE CODE AND COLORADO LAW APPLICABLE TO THE TAXPAYER'S
17 RETURN AS OF THE DATE THE RETURN WAS DUE, AS MODIFIED BY THE
18 APPLICATION OF THE RETROACTIVE PROVISIONS OF THE CARES ACT
19 APPLIED TO THE CALCULATION OF THE TAXPAYER'S FEDERAL TAXABLE
20 INCOME, BUT ONLY TO THE EXTENT THE TAXPAYER APPROPRIATELY
21 APPLIED THOSE PROVISIONS TO THE TAXPAYER'S FEDERAL INCOME TAX
22 RETURNS FOR EACH TAX YEAR.

23 (E) "TAXABLE INCOME FOR THE SPECIFIED TAX YEARS" MEANS THE
24 TAXPAYER'S COLORADO TAXABLE INCOME FOR TAX YEARS ENDING
25 BEFORE MARCH 27, 2020, AS CALCULATED UNDER COLORADO LAW
26 APPLICABLE TO THE TAXPAYER'S RETURN AS OF THE DATE THE RETURN
27 WAS DUE.

1 **SECTION 4. Appropriation.** (1) For the 2020-21 state fiscal
2 year, \$130,254 is appropriated to the department of revenue. This
3 appropriation is from the general fund. To implement this act, the
4 department may use this appropriation as follows:

5 (a) \$125,934 for use by the taxpayer service division for personal
6 services, which amount is based on an assumption that the division will
7 require an additional 2.6 FTE; and

8 (b) \$4,320 for use by the taxpayer service division for operating
9 expenses.

10 (2) For the 2021-22 state fiscal year, \$96,905 is appropriated to
11 the department of revenue. This appropriation is from the general fund.
12 To implement this act, the department may use this appropriation as
13 follows:

14 (a) \$4,608 for use by the executive director's office administration
15 and support division for personal services;

16 (b) \$41,850 for tax administration IT system (GenTax) support;

17 (c) \$14,805 for use by the taxation and compliance division for
18 personal services; and

19 (d) \$35,642 for use by the taxpayer service division for personal
20 services, which amount is based on an assumption that the division will
21 require an additional 0.7 FTE.

22 **SECTION 5. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety.